Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ZHOU YANG, YIN-NIAN LIN,
ZHENYA ZHU and BRIAN G. RISCH

Appeal No. 2003-0365
Application No. 09/280,601

ON BRIEF

Before KIMLIN, OWENS and KRATZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

REQUEST FOR REHEARING

Appellants request rehearing and clarification of our decision of February 25, 2003, wherein we affirmed the examiner's rejection of claims 116-135 over the judicially created doctrine of obviousness-type double patenting, as well as the examiner's rejections under 35 U.S.C. § 112, first and second paragraphs, of claims 23-58, 80-115, 121, 122, 133, 134 and 135. We did not

sustain the examiner's rejection of claims 116, 117, 124-132, 134 and 135 under 35 U.S.C. § 112, first paragraph.

Apparently because we did not sustain the examiner's rejection of claims 116, 117, 124-132, 134 and 135 under § 112, first paragraph, appellants believe that "the Decision should have concluded that the Examiner's rejections had been Affirmed-In-Part and Reversed-In-Part" (page 1 of Request, second paragraph). However, it is a long-standing practice of the Board to designate a decision as an affirmance when a rejection or rejections of all the claims on appeal are sustained, notwithstanding that another rejection by the examiner may have been reversed. This is so because it is the decision of the examiner to reject all the appealed claims that is either affirmed, reversed or affirmed-in-part.

Appellants request clarification because they "have the opportunity to file a continuation of the subject application and obtain allowance with respect to claims 116-133" (page 2 of Request, second paragraph). However, there is nothing about our designation of the decision as an affirmance which precludes appellants from filing a continuation application and pursuing the allowance of claims 116-133.

Appellants' request is denied with respect to making any change in our decision.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

DENIED

EDWARD C. KIMLIN)
Administrative Patent Judge)
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TERRY J. OWENS) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
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PETER F. KRATZ)
Administrative Patent Judge)

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